

Regular Session, 2009

HOUSE BILL NO. 476

BY REPRESENTATIVES CONNICK, HENRY BURNS, CARTER, CHAMPAGNE,  
FOIL, HARDY, KATZ, LEGER, LIGI, LITTLE, MILLS, PERRY, POPE, PUGH,  
ROBIDEAUX, SIMON, SMILEY, JANE SMITH, TALBOT, TEMPLET,  
THIBAUT, AND WILLMOTT AND SENATORS CROWE, DUPLESSIS,  
MICHOT, SMITH, THOMPSON, AND WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To amend and reenact R.S. 14:81.4(A), (B)(2) and (4), and (E)(1), 91.1(A)(2), 91.2(B), (C),  
and (D) and R.S. 15:538(A), (D)(1)(b) and (c), and (6)(b) and (c), and to enact R.S.  
14:91.2(E), 91.3, and 91.4, relative to the protection of children; to amend the crime  
of prohibited sexual conduct between educator and student; to amend the crime of  
unlawful presence of a sexually violent predator to apply to child care facilities and  
family child day care homes; to amend the crime of unlawful presence of a sex  
offender to apply to certain locations; to create the crime of unlawful participation  
in a child-related business and to provide for criminal penalties; to create the crime  
of contributing to the endangerment of a minor and to provide for criminal penalties;  
to provide relative to conditions of probation, parole, or suspension of sentence for  
convicted sex offenders with respect to volunteer work activities; and to provide for  
related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:81.4(A), (B)(2) and (4), and (E)(1), 91.1(A)(2), 91.2(B), (C), and  
(D) are hereby amended and reenacted and R.S. 14:91.2(E), 91.3, and 91.4 are hereby  
enacted to read as follows:

§81.4. Prohibited sexual conduct between educator and student

A. Prohibited sexual conduct between an educator and a student is  
committed when any of the following occur:

(1) An educator has sexual intercourse with a person who is seventeen years of age or older, but less than ~~nineteen~~ twenty-one years of age, where there is an age difference of greater than four years between the two persons, when the victim is not the spouse of the offender and is a student at the school where the educator is assigned, employed, or working at the time of the offense.

(2) An educator commits any lewd or lascivious act upon a student or in the presence of a student who is seventeen years of age or older, but less than ~~nineteen~~ twenty-one years of age, where there is an age difference of greater than four years between the two persons, with the intention of gratifying the sexual desires of either person, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense.

(3) An educator intentionally engages in the touching of the anus or genitals of a student seventeen years of age or older, but less than ~~nineteen~~ twenty-one years of age, where there is an age difference of greater than four years between the two persons, using any instrumentality or any part of the body of the educator, or the touching of the anus or genitals of the educator by a person seventeen years of age or older, but less than ~~nineteen~~ twenty-one years of age, where there is an age difference of greater than four years between the two persons, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student.

B. As used in this Section:

\* \* \*

(2) "School" means a public or ~~private~~ nonpublic elementary or secondary school or learning institution ~~excluding~~ which shall not include universities and colleges.

\* \* \*

(4) "Student" includes students enrolled in a school who are seventeen years of age or older, but less than ~~nineteen~~ twenty-one years of age.

\* \* \*

1           E.(1) ~~Whoever commits the crime of prohibited sexual conduct between an~~  
2           ~~educator and a student when the student is seventeen years of age or older, but less~~  
3           ~~than nineteen years of age, violates the provisions of this Section~~ shall be fined not  
4           more than one thousand dollars, or imprisoned for not more than six months, or both.

5                               \*           \*           \*

6           §91.1. Unlawful presence of a sexually violent predator

7                       A. Unlawful presence of a sexually violent predator is:

8                               \*           \*           \*

9                       (2) The physical residing of a sexually violent predator within one thousand  
10           feet of any public or private elementary or secondary school, a day care facility  
11           center, group home, residential home, or child care facility as defined in R.S.  
12           46:1403, a family child day care home as defined in R.S. 46:1441.1, playground,  
13           public or private youth center, public swimming pool, or free standing video arcade  
14           facility.

15                            \*           \*           \*

16           §91.2. Unlawful presence of a sex offender

17                            \*           \*           \*

18                       B. The following acts, when committed by a person convicted of an  
19           aggravated offense as defined in R.S. 15:541(2) when the victim is under the age of  
20           thirteen years, shall constitute the crime of unlawful residence or presence of a sex  
21           offender:

22                       (1) The physical presence of the offender in, on, or within one thousand feet  
23           of a day care center, group home, residential home, or child care facility as defined  
24           in R.S. 46:1403, or a family child day care home as defined in R.S. 46:1441.1.

25                       (2) The establishment of a residence within one thousand feet of any day  
26           care center, group home, residential home, or child care facility as defined in R.S.  
27           46:1403, a family child day care home as defined in R.S. 46:1441.1, playground,  
28           public or private youth center, public swimming pool, or free standing video arcade  
29           facility.

1           ~~B. C.~~(1) It shall not be a violation of the provisions of this Section if the  
2 offender has permission to be present on school premises from the superintendent  
3 of the school board in the case of a public school or the principal or headmaster in  
4 the case of a private school.

5           (2) If permission is granted to an offender to be present on public school  
6 property by the superintendent for that public school pursuant to this Subsection,  
7 then the superintendent shall notify the principal at least twenty-four hours in  
8 advance of the visit by the offender. This notification shall include the nature of the  
9 visit and the date and time in which the sex offender will be present in the school.  
10 The offender shall notify the office of the principal upon arrival on the school  
11 property and upon departing from the school. If the offender is to be present in the  
12 vicinity of children, the offender shall remain under the direct supervision of a  
13 school official.

14           (3) Any superintendent, principal, or school master who acts in good faith  
15 in compliance with this Subsection shall be immune from civil or criminal liability  
16 for his actions in connection with any injury or claim arising from an offender being  
17 present on school property pursuant to permission granted by that superintendent,  
18 principal, or school master.

19           ~~C. D.~~ For purposes of this Section:

20           (1) "School property" means any property used for school purposes,  
21 including but not limited to school buildings, playgrounds, and parking lots.

22           (2) "Public park or recreational facility" means any building or area owned  
23 by the state or by a political subdivision which is open to the public and used or  
24 operated as a park or recreational facility and shall include all parks and recreational  
25 areas administered by the office of state parks in the Department of Culture,  
26 Recreation and Tourism.

27           ~~D. E.~~ Whoever violates the provisions of this Section shall be fined not more  
28 than one thousand dollars, imprisoned with or without hard labor for not more than  
29 one year, or both.

1        §91.3. Unlawful participation in a child-related business

2                A. No person convicted of a sex offense as defined in R.S. 15:541, whose  
3        offense involved a person under the age of thirteen years, shall own, operate, or in  
4        any way participate in the governance of those child care facilities as enumerated in  
5        R.S. 46:1403 or in family child day care homes as defined in R.S. 46:1441.1.

6                B. Whoever violates the provisions of this Section shall be fined not more  
7        than one thousand dollars, imprisoned with or without hard labor for not more than  
8        one year, or both.

9        §91.4. Contributing to the endangerment of a minor

10              A. No person shall knowingly employ a person convicted of a sex offense  
11        as defined in R.S. 15:541, whose offense involved a minor child, to work in any of  
12        the following facilities:

13              (1) A day care center, residential home, community home, or group home  
14        or child care facility as defined in R.S. 46:1403; or

15              (2) A family child day care home as defined in R.S. 46:1441.1.

16              B. No person shall knowingly permit a person convicted of a sex offense as  
17        defined in R.S. 15:541 physical access to any of the following facilities:

18              (1) A day care center, residential home, community home, group home, or  
19        child care facility as defined in R.S. 46:1403; or

20              (2) A family child day care home as defined in R.S. 46:1441.1.

21              C. Whoever violates the provisions of this Section shall be fined not more  
22        than one thousand dollars, imprisoned for not more than six months, or both.

23        Section 2. R.S. 15:538(A), (D)(1)(b) and (c), and (6)(b) and (c) are hereby amended  
24        and reenacted to read as follows:

25        §538. Conditions of probation, parole, and suspension or diminution of sentence

26              A.(1) No sexual offender, whose offense involved a minor child, shall be  
27        eligible for probation, parole, or suspension of sentence unless, as a condition  
28        thereof, the sexual offender is prohibited from engaging in any business ~~or volunteer~~  
29        ~~work~~ activity which provides goods, services, instruction, or care to and requires the  
30        offender to engage in a significant amount of direct contact with minor children.

(2) No sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from engaging in any volunteer work activity which provides goods, services, instruction, or care to or requires the offender to engage in direct contact with minor children. When the volunteer activity does not require the offender to engage in such contact with minor children due to the nature of the volunteer activity, the sex offender shall nonetheless provide notice to the officer or director of the volunteer organization of his status as a convicted sex offender prior to engaging in any volunteer work activity with the organization. No volunteer organization, nor any officer or director thereof, shall be civilly liable for any injury caused by a violation of the provisions of this Subsection.

\* \* \*

D.(1) No sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from:

\* \* \*

(b) Going in, on, or within one thousand feet of a day care facility center, group home, residential home, or child care facility as defined in R.S. 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.

(c) Physically residing within one thousand feet of any public or private elementary or secondary school, day care ~~facility~~ center, group home, residential home, or child care facility as defined in R.S. 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.

\* \* \*

(6) Any sexual offender, whose offense involved a minor child, and who was placed on probation or was paroled prior to August 15, 2004, and is on probation or parole as of August 15, 2005, shall have the following prohibitions added as

1 conditions of probation and parole pursuant to Code of Criminal Procedure Articles  
2 895 and 896 or R.S. 15:574.4 and ~~R.S. 15:574.7~~:

3 \* \* \*

4 (b) Going in, on, or within one thousand feet of a day care ~~facility center~~,  
5 group home, residential home, or child care facility as defined in R.S. 46:1403, a  
6 family child day care home as defined in R.S. 46:1441.1, playground, public or  
7 private youth center, public swimming pool, or free-standing video arcade facility.

8 (c) Physically residing within one thousand feet of any public or private  
9 elementary or secondary school, day care ~~facility center~~, group home, residential  
10 home, or child care facility as defined in R.S. 46:1403, a family child day care home  
11 as defined in R.S. 46:1441.1, playground, public or private youth center, public  
12 swimming pool, or free-standing video arcade facility.

13 \* \* \*

14 Section 3. This Act shall become effective on September 1, 2009.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_